

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES LOVE,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 48A04-0710-CR-568

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0409-FC-453

April 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

James Love appeals the revocation of his probation. Because he did not file his notice of appeal within 30 days of the entry of the court's order, we *sua sponte* dismiss for lack of jurisdiction.

FACTS AND PROCEDURAL HISTORY

Love was on probation. The State filed a notice of probation violations. On June 4, 2007, the court held a hearing at which it revoked Love's probation. On July 13, 2007, Love moved for belated appeal and pauper counsel. On August 3, 2007, the court granted his motions.

DISCUSSION AND DECISION

Pursuant to Post-Conviction Rule 2, "[a]n eligible defendant convicted after a trial or plea of guilty may petition the trial court for permission to file a belated notice of appeal of the conviction or sentence."

An "eligible defendant" for purposes of this Rule is a defendant who, but for the defendant's failure to do so timely, would have the right to challenge on direct appeal a conviction or sentence after a trial or plea of guilty by filing a notice of appeal, filing a motion to correct error, or pursuing an appeal.

P-C.R. 2. Rule 2 is a "vehicle for belated direct appeals alone," *Greer v. State*, 685 N.E.2d 700, 702 (Ind. 1997) (quoting *Howard v. State*, 653 N.E.2d 1389, 1390 (Ind. 1995)), and "does not permit belated consideration of appeals of other post-judgment petitions." *Id.*

Love is not bringing a "direct appeal [of] a conviction or sentence after a trial or plea of guilty." P-C.R. 2. Rather he is appealing the revocation of his probation. Accordingly, the trial court erred when it granted him permission to file a belated appeal.

See Greer, 685 N.E.2d at 702. Because we do not have jurisdiction, we must dismiss.

See id. (dismissing belated appeal of revocation of probation).

Dismissed.

KIRSCH, J., and RILEY, J., concur.